

*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION NO. 2105 of 2007

% 8th day of February, 2007

Life Insurance Corporation of India,
South Central Zonal Office, Opposite
to Secretariat, Hyderabad, represented
by its Regional Manager (Legal & HPF)

... Petitioner

versus

\$ The District Election Officer and Commissioner,
Municipal Corporation of Hyderabad and others.

... Respondents

! Counsel for the petitioner : Mr M.V. Suresh

^ Counsel for the respondents : Mr Rama Rao Ghanta
Smt G.Jyothi Kiran

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>Head Note:

? Cases referred

1. (1948) 76 CLR 1
2. (1883) 110 US 421, 28 L. ed. 204

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

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ORDER:

The Life Insurance Corporation of India (LIC) (the Corporation) is the petitioner. It impeaches the directions by respondent Nos.2 to 5 to issue of necessary instructions to the subordinate Officers/Heads of Offices of the LIC to spare the services of staff members for appointing them as Enumerators, Designated Officers and Booth Level Officers for the specified Assembly Constituencies, for revision of electoral rolls, as and when requisitioned by the concerned Electoral Registration Officers/Deputy Municipal Commissioners and Additional Commissioners. There being no response and timely response by the Corporation to the requisition/directives of respondent Nos.2 to 5, notices were issued on 04-12-2006 and thereafter, reiterating the directives, calling upon the Senior Divisional Manager of the petitioner-Corporation, Secunderabad, Divisional Office, Hyderabad to furnish a list of staff working under the addressee's control, within the stipulated time and intimating that failure to respond positively would attract the provisions of the Representation of the People Act, 1951 (for short 'the 1951 Act').

Sri M.V.Suresh, the learned counsel for the petitioner submits that the directives/requisitions issued by the respondents 3 to 5 are beyond their power, authority and jurisdiction either under the provisions of the Representation of People Act 1950 (the 1950 Act) or the Representation of People Act 1951 (the 1951 Act), and the respondents should therefore be restrained from threatening and coercing the Corporation to depute its staff.

On facts, it is contended that the petitioner is a commercial organization, in the public sector, having variegated and vast commercial obligations to fulfill and that its personnel who are critically trained in Life Insurance functions cannot be deployed except to its functional detriment. This factual circumstance is the basis for the petitioner's resistance to the call by respondents 2 to 5 to depute its officers for assisting in the preparation and revision of electoral rolls and other ancillary functions, as per the requisitions impugned in this writ petition.

According to Sri M.V.Suresh, neither under Section 29 of the 1950 Act nor under Section 159 of the 1951 Act is power or authority available to issue requisitions or directives as are impeached in this writ petition.

Section 29 of the Representation of the People Act, 1950 reads as under:

“Staff of local authorities to be made available:-

Every local authority in a State shall, when so requested by the Chief electoral officer of the State make available to any electoral registration officer such staff as may be necessary for the performance of any duty in connection with the preparation and revision of electoral rolls.”

Section 159 of the Representation of People Act, 1951 reads as under:

“Staff of certain authorities to be made available for election work:-

- (1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection

with an election.

(2) The following shall be the authorities for the purposes of sub-section (1), namely:-

- (i) every local authority;
- (ii) every university established or incorporated by or under a Central, Provincial or State Act;
- (iii) a Government company as defined in Section 617 of the Companies Act, 1956;
- (iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.”

It requires to be noticed that Section 159 of the 1951 Act was substituted by the amendments under Act 12 of 1998. Prior to such amendment, Section 159 read as under:-

“ 159. Staff of every local authority to be made available for election work. (Every local authority in a State shall, when so requested by a Regional Commissioner appointed under clause (4) of Article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.”

By the amendment in 1998, the requisitional reach of a Regional Commissioner appointed under Article 324 (4) of the Constitution or the Chief Electoral Officer of the State to seek deputation of staff to assist in the performance of any duties in connection with an election

was extended to include the authorities specified in Sub Section (2). Prior to the amendment, the requisition could be made only of the staff of a local authority.

The 1950 Act is an Act to provide for allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filing seats in the Council of States to be filed by representatives of union territories, and matters connected therewith. This is the preamble charter of the 1950 Act. Section 29 of this Act ordains that every local authority in a State should, on requisition by the Chief Electoral Officer of the State, make available such staff as may be necessary for the purpose of any duty in connection with the preparation and revision of electoral rolls. On a true and fair construction of the provisions of Section 29 of the 1950 Act, the legislative intent is clear and invites no dynamic interpretive processing. The requisition to a local authority may be made for the performance of any duty in connection with the preparation and revision of electoral rolls; a requisition may not be made for the performance of any duty other than in connection with preparation and revision of electoral rolls, a specified delineated step in the larger matrix of elections. Preparation of electoral rolls is one of the steps, critical though, that precedes the conduct of an election. Section 29 of the 1950 Act is clearly designed to enable requisition of staff from a local authority in a State for the performance of duties in connection with preparation and revision of electoral rolls and, therefore, requisition of staff, for instance, for the actual conduct of elections, is outside the ambit of the requisitional powers under Section 29 of the 1950 Act.

The 1951 Act was enacted to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the

Legislature of each State, the qualifications and disqualifications for membership of those Houses, corrupt practices and other offences at or in connection with such elections and for the resolution of doubts and disputes arising out of or in connection with such elections.

Section 159 occurs in Chapter X of the 1951 Act, a chapter which sets out the miscellaneous provisions of the legislation. The marginal heading of Section 159 is “staff of certain authorities to be made available for election work.”

Sub-section (1) of Section 159 empowers the specified Officers conducting and regulating elections to requisition such staff as may be necessary for the performance of any duties in connection with an election. The provision also enumerates the authorities to whom such requisition may be addressed. Sub- Section 2 of Section 159 enumerates the authorities to whom a requisition may be addressed by the Officers conducting and regulating elections, specified in Sub-section (1). As a corollary to this power is an obligation enjoined on the specified classes of authorities to depute such staff as may be necessary and for the purposes legislatively defined. Sub- Section (1) of Section 159 sets out the purposes for which the requisition may be made to the specified authorities. The purpose is “for the performance of any duties in connection with an election”.

Sri M.V.Suresh would contend that as the provisions of the 1950 Act deal with the stage preceding the elections and the provisions of the 1951 Act with aspects of elections subsequent to the stage of electoral rolls, namely, the conduct of elections proper and specified matters connected therewith, the power conferred on the specified election authorities (under Section 159 of the 1951 Act) to requisition staff must be construed as limited to the legislative concerns specified in the several provisions of the 1951 Act and that its provisions may not extend to the legislative purposes encompassed by the provisions of the 1950 Act. To annotate this submission, the learned counsel

would urge that requisition of staff for the preparation of electoral rolls could only be under the provisions of the 1950 Act and not the 1951 Act. On this empirical legislative intent analysis, the learned counsel would urge that the expression “in connection with an election” must receive a restricted meaning as implicating steps in an election process, subsequent to the preparation of the electoral roll.

In support of this contention and first principle analysis of the Provisions of the 1950 Act and the 1951 Act, it is urged that the expression “**election**” is defined in Section 2 (d) of the 1951 Act to mean “ an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir”.

Since ‘election’ is defined as an election to fill a seat or seats in the specified legislative bodies, preparation of electoral rolls is an area of electoral operation beyond the scope of the provisions of the 1951 Act, is the contention.

The contention urged on behalf of the petitioner does not commend acceptance by this Court. Legislative drafting cannot, absent a constitutional restriction on the exercise of legislative powers, be caged or cabined in the manner suggested on behalf of the petitioner. A legislative power, within the limits of a constitutional grant, is plenary and illimitable. The legislature also has a choice and an unlimited choice at that, as to drafting techniques. Legislative policy is primarily if not exclusively within the domain of the legislatures. It is a well settled principle of statutory construction and in the constitutional context that where a legislature has a basket of enumerated legislative powers and in a plurality of legislative lists, the Legislature is at liberty to design the architecture of a legislation drawing from more than one list or to include a plurality of legislative fields in the basket of legislative powers, in a particular legislation. Thus and to illustrate, it is open to a

State legislature to enact a comprehensive legislation, for Municipalities and Gram Panchayats together (vide entry 5, list II). A Legislature may legislate on fields as diverse as enumerated in the exclusive and concurrent lists, subject to federal discipline.

It is not contended that the legislative field relating to allocation of seats, delimitation of constituencies, qualification of voters, preparation of electoral rolls in respect of the Houses of the People and the legislatures of the States on the one hand and the legislative field in respect of conduct of elections, prescription of qualifications and disqualifications, delineation of corrupt practices or other offences in respect of elections to the House or Houses of the Legislature of a State are fields beyond the legislative domain of the federal legislature-the Parliament.

Entry 72 of the Union List in the Seventh Schedule reads:

“72. Elections to the Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.”

Entry 37 of the State List in the Seventh Schedule enumerates the legislative field:

“37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.”

As is apparent from the legislative field enumerated in Entry 72 of List-I, elections to the Parliament and to the Legislatures of the States is a field consecrated to the Union. Though elections to the Legislatures of the States, is a field consecrated to the State Legislature as well, by Entry 37 of the State List, the State field is subject to the provisions of any law made by Parliament. Given the *non obstante* grant of legislative power to the Parliament [vide Art.246(1)], the Union legislative field *qua* Entry 72 of List-I has

paramount efficacy. In any event it is the Parliament which has enacted both the 1950 as well as the 1951 Acts.

Art. 246 grants the Parliament power to legislate “with respect to” any of the matters enumerated in List-I. The principles with regard to interpretation of legislative fields is best understood in the classic exposition by Dixon, J in ***Bank of N.S.W. v Commonwealth***^[1]:

*“The purpose of the enumeration of powers in s.51 is not to define or delimit the description of law that the Parliament may make upon any of the subjects assigned to it. Speaking generally, the legislative power so given is plenary in its quality. The purpose of the enumeration is to name a subject for the purpose of assigning it to that power. The names or descriptions employed are usually of the briefest kind. It is true that certain powers do involve a description amounting almost to a formal definition; ... But more often they are the most general names of general topics. To borrow the words of Gray J, delivering the opinion of the Sup. Ct. in **Juilliard v Greenman**^[2]. ‘The Constitution ... by apt words of designation or general description, marks the outlines of the powers granted to the National Legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the sub-divisions of those powers, or to specify all the means by which they may be carried into execution’.”*

Though the exposition by Dixon J is in the context of Sec.51 of the Australian Constitution, the principles are equally applicable to the Legislative Lists in the Seventh Schedule to our Constitution.

The 1950 and 1951 Acts are legislative exercises of the Parliament, referable to Entry 72 of the Union List. The 1950 Act covered a limited field – *the allocation of seats in and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union Territories, and matters connected therewith.*

The 1951 Act provides for *the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.*

Sec. 29 of the 1950 Act obligates every local authority in a State, when so requested by the Chief Electoral Officer of the State, to make available such staff as may be necessary for the performance of any duty in connection with the preparation and revision of electoral rolls.

Sec. 159 of the 1951 Act obligates the authorities specified in sub-section (2), when so requested by the Regional Commissioner appointed under Art. 324(4) or the Chief Electoral Officer of the State, to make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election. Among the specified authorities [Sec.159(2)] are *other institutions, concerns or undertakings established by or under a Central, Provincial or State Act or which are controlled, or financed, wholly or substantially, by funds provided, directly or indirectly, by the Central Government or a State Government.*

That the petitioner – the Life Insurance Corporation is an institution established under a Central Act and is thus an authority within the meaning of the expression in Sec.159(1), is not in dispute. What Mr. Suresh, the learned Advocate contends is that since the 1950 Act specifically deals with the preparation of electoral rolls and Sec. 29 thereof obligates only the local authorities to make available staff for the performance of any duties in connection with the preparation and revision of electoral rolls; the provisions of Sec.159 of the 1951 Act cannot be called to aid to requisition staff from any of the authorities specified in sub-sec.(2) of Sec.159, for the performance of

any duties in connection with the preparation and revision of electoral rolls.

Legislative fields, as pointed out by Dixon J, in the ***Common Wealth*** case (1 supra) are enumerated in several entries in the three Lists in the Seventh Schedule not with a view to define or delimit the description of law that the appropriate legislature may make upon any of the subjects described. The enumeration is to name a subject for the purpose of assigning it to the specified legislature. The descriptions are in brief and must include all necessary and incidental powers.

In any event it is the Parliament which is assigned in the Union List the field of legislation relating to election to the Parliament and to the Legislatures of the States and it is the Parliament that has enacted both the 1950 and 1951 Acts. In drafting its legislative policy, having regard to the plenary nature of the legislative power, the Legislature may make laws with respect to the whole of the available legislative field or choose to deal only with a limited area. The Legislature is normally the best judge of how to employ its legislative functions and to choose the time, place and occasion for employment of its legislative powers. In pursuing its legislative agenda the appropriate legislature may draw, according to its choice, from the catalogue of available legislative fields, in the appropriate List(s).

There is nothing in provisions of Sec.159 or in the setting in which the provision occurs in the 1951 Act which suggests a construction that the requisition for staff for the performance of duties in connection with an election must be construed as excluding the purpose of preparation and revision of electoral rolls. Preparation and revision of electoral rolls being a function integral to and vitally connected with an election, the powers of requisition u/Sec.159(1) of the 1951 Act enables the respondents to issue a requisition to the petitioner.

For the aforesaid reasons and on the aforesaid analysis, the contention of the petitioner merits no acceptance by this Court.

There are no merits in the writ petition. The writ petition is accordingly dismissed. In the circumstances there shall be no order as to costs.

GODA RAGHURAM,J

8th February 2007
IBL/TSNR

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Note:-

L.R. Copy to be marked.

[\[1\]](#) (1948) 76 CLR 1

[\[2\]](#) (1883) 110 US 421, 28 L. ed. 204